

**IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA
CHARLESTON**

No. 33905

LEA ANNE HAWKINS,

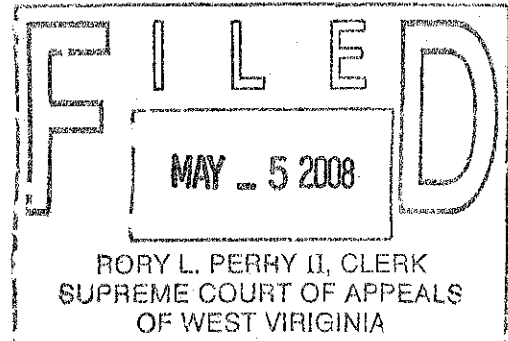
Petitioner Below/Appellant,

v.

**ANTHONY J. JULIAN, JUDGE,
MUNICIPAL COURT OF THE CITY OF FAIRMONT,**

Respondents Below/Appellees.

AND



No. 33906

GRETCHEN MEZZANOTTE,

Petitioner Below/Appellant,

v.

**ANTHONY J. JULIAN, JUDGE,
MUNICIPAL COURT OF THE CITY OF FAIRMONT,**

Respondents Below/Appellees.

BRIEF OF APPELLANTS

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**ANTHONY J. JULIAN, JUDGE,
MUNICIPAL COURT OF THE CITY OF FAIRMONT,**

Respondents Below/Appellees.

BRIEF OF APPELLANTS

KIND OF PROCEEDING AND THE LOWER COURT RULING

To the Honorable Justices of the Supreme Court of Appeals of West Virginia:

Your Appellants, Lea Anne Hawkins and Gretchen Mezzanotte, respectfully

represent that they are aggrieved by an Order of the Circuit Court of Marion County, West Virginia, entered on October 23, 2007, which denied them injunctive relief and a writ of prohibition in regard to criminal prosecution proceedings in the Municipal Court of the City of Fairmont which focused on their breach of contract with the City of Fairmont.

STATEMENT OF FACTS

These are cases about the abuse of power of a municipal court and its Judge who clearly lacked jurisdiction to summon a private citizen to its court over a breach of contract with the City of Fairmont. The Supreme Court of Appeals should rule clearly and affirmatively that a municipal court may not ride roughshod over any citizen, in violation of the citizen's constitutional rights of liberty and to be secure, when that citizen has committed no criminal offense. This Court must stop a municipal court and its judge from having people arrested for breaching parking ticket amnesty contracts. An injunction and writ of prohibition should have been issued for same by the Circuit Court below.

A. Lea Anne Hawkins:

This case was initiated by and through a petition pursuant to Rule 65 of the West Virginia Rules of Civil Procedure and West Virginia Code § 53-5-1 et seq., for a preliminary injunction and temporary restraining order, and writ of prohibition to stop Anthony J. Julian, Judge, and the Municipal Court of the City of Fairmont, from proceeding further in an arraignment and any further proceedings regarding "City of Fairmont, Parking Enforcement v. Leeann Hawkins [sic]" for the alleged charge of

"Failure to Pay on Parking Fine Arrangement" or for "Fail [sic] to Appear at a Hearing Scheduled 8/16/07 for Failure to Pay on Parking Fine Arrangement after Being Sent Notice."

On a former day, the Appellant executed a "Parking Fines and Penalty Payment Agreement" [hereinafter Amnesty Agreement] (Exhibit 1) which was by and between The City of Fairmont and the Appellant. The Municipal Court nor its Judge nor its City Attorney were involved in negotiating the agreement, ratifying the agreement or entering the agreement. The Amnesty Agreement was not approved by the Municipal Court Judge nor was it approved by order of the Municipal Court Judge.

By the terms of the Amnesty Agreement, Appellant allegedly owed a certain amount in parking fines and parking penalties to the City of Fairmont, although *never* admitting same any debt owing to the City of Fairmont, and the Appellant agreed to make monthly payments to the City of Fairmont in exchange for the City agreeing to reduce the parking penalties by half.

The Appellant never was charged with any criminal offense, was never advised that the City may view her parking tickets as criminal in nature, was never advised that if the parking tickets were viewed as being criminal in nature that she would have the right to a trial, and was never advised of her constitutional and statutory rights which would attach if her parking tickets had been criminal in nature or if a breach of the Amnesty Agreement would be viewed as a criminal act. The Appellant was never advised that by signing the Amnesty Agreement that she waived or gave up all of her constitutional and statutory rights that one would have if accused of a crime.

Over the course of time, the Appellant made several monthly payments to the

City of Fairmont under the terms of the Amnesty Agreement. The Appellant subsequently became delinquent in making monthly payments, which would have constituted a breach of said Amnesty Agreement.

The Appellant received a notice (Exhibit 2) from the Municipal Court of the City of Fairmont indicating that she should appear for a hearing at the said Municipal Court on August 16, 2007, at 3:30 p.m. regarding her failure to pay on the Parking Fine [Amnesty] Agreement. The Appellant telephoned City Attorney, Kevin Sansalone, and indicated that she would not be appearing at the so-called hearing before Municipal Court Judge Anthony J. Julian, because she had other commitments as required by her employer. Mr. Sansalone indicated to the Appellant that if she did not appear for the hearing, there would be consequences to pay.

In fact, when the Appellant did not appear for the Municipal Court hearing, a Capias (Exhibit 3) was issued for the arrest of the Appellant, said Capias entered by Municipal Judge Anthony J. Julian, without there being a criminal complaint or criminal citation sworn out by a police officer, and without a criminal case being prosecuted by the City Attorney. At or about 4:30 p.m., Fairmont City Police Officers Campbell and Peyton appeared at Appellant's place of employment, and asked for the Appellant. Upon information and belief, the Officers Campbell and Peyton were informed that the Appellant was engaged in the participation of multi-disciplinary team (MDT) abuse/neglect meetings. Officers Campbell and Peyton proceeded to the location of the MDT meetings offices to arrest the Appellant.

Upon Officers Campbell and Peyton's arrival at the DHHR, Officer Campbell briefly entered the room in which the Appellant was participating in an MDT meeting,

and then they retreated. Appellant's undersigned counsel, then left the said room to inquire with the Officers what their intention was, and she was informed that the Officers were in possession of a Capias for the arrest of the Appellant. Upon Counsel's review of said Capias, she informed the Officers that the Capias included no case number and that there was no criminal offense indicated on said Capias and accordingly they should not be executing any arrest of the Appellant. The said Capias indicated that the Appellant should be brought before the Municipal Judge, forthwith, and be confined in the Marion County Jail, until she "fully satisfied the City of Fairmont in the amount of \$200.00 cash," and that the Appellant "did *unlawfully* fail to appear at a hearing scheduled 8/16/07 for failure to pay on parking fine arrangement after being sent notice." (emphasis added)

Officer Campbell then indicated to Counsel that he would and did phone his Lieutenant, which was Lt. Mark Hayes of the Fairmont Police Department, to determine whether the Officers should continue to execute the Capias and arrest the Appellant. Officer Campbell then informed Counsel that Lt. Hayes stated that the Capias should be executed forthwith and the Appellant should be arrested and taken to the Fairmont Police Department.

At or about 4:40 p.m., the Appellant then agreed to proceed to be taken into custody of the Officers Campbell and Peyton, as they had indicated if she went willingly, she would not be handcuffed. Appellant was placed in a locked police cruiser and was taken to the Fairmont Police Department, where she was taken and locked in a processing room. Officers Campbell and Peyton accompanied Appellant to the same and Lt. Mark Hayes proceeded into the processing room. The processing room was

locked so that the Appellant could not leave. Appellant was never informed that she could leave.

Officer Peyton proceeded to process the Appellant by asking for and taking the Appellant's driver's license and inquiring about other personal information of the Appellant which was not available through her driver's license. Just before Officer Peyton began to fingerprint the Appellant, Officer Campbell asked the Appellant for her credit card so that it could be processed for the \$200 payment. Appellant provided a credit card to Officer Campbell for the said payment and Officer Peyton then proceeded to fingerprint the Appellant.

After Officer Peyton had concluded obtaining the fingerprints of the Appellant and after Officer Campbell had processed the Appellant's credit card for the \$200 payment which would allegedly "fully satisf[y]" the City of Fairmont, then Officer Campbell declared that the Appellant would be required to attend her "arraignment" on the charge of "Capias/ Fail to Appear of Parking Fine" on August 21, 2007, at 7:30 a.m. Officer Campbell issued to Appellant the attached apparent notice of her arraignment hearing (Exhibit 4). The said notice did not contain any case number.

Counsel inquired with Officer Campbell whether any citation or criminal complaint had been filed prior to or contemporaneous with the Capias which had been issued for the Appellant. Officer Campbell stated "There has been no citation filed." Counsel then inquired whether a criminal complaint had been filed. Officer Campbell responded "No."

Neither a criminal complaint nor any criminal citation was ever filed against the Appellant.

Before the Municipal Court "arraignment" hearing took place on August 21, 2007,

the Appellant caused to be filed the petition for a preliminary injunction and temporary restraining order, and writ of prohibition to stop Anthony J. Julian, Judge, and the Municipal Court of the City of Fairmont, from proceeding further in that arraignment. The Circuit Court of Marion County docketed a hearing to hear arguments on August 20, 2007, at which time the Circuit Court took the matters under advisement and ordered the municipal court proceedings to be stayed until further order of the Court.

Subsequently, by Order entered the 23rd day of October, 2007, the Court entered an Opinion/Order which denied the petition for preliminary injunction, permanent injunction, temporary restraining order and petition for writ of prohibition. The Circuit Court thereafter ordered a stay of the municipal court proceedings until the Supreme Court could render a decision regarding this case, and called the case "a close call." It is the denial of the petitions which Appellant asserts was in error and she hereby files this petition for writ of error.

B: Gretchen Mezzanotte

This case was initiated by and through a petition pursuant to Rule 65 of the West Virginia Rules of Civil Procedure and West Virginia Code § 53-5-1 et seq., for a preliminary injunction and temporary restraining order, and writ of prohibition to stop Anthony J. Julian, Judge, and the Municipal Court of the City of Fairmont, from proceeding further in an arraignment and any further proceedings regarding "City of Fairmont, Parking Enforcement v. Gretchen Mezzanotte" for the alleged charge of "Failure to Pay on Parking Fine Arrangement" and for "Fail to Appear at a Hearing Scheduled 8/16/07 for Failure to Pay on Parking Fine Arrangement after Being Sent

Notice.”

On a former day, the Appellant executed a “Parking Fines and Penalty Payment Agreement” [hereinafter Amnesty Agreement] which was by and between The City of Fairmont and the Petitioner. (Exhibit 1) The Municipal Court nor its Judge nor its City Attorney were involved in negotiating the agreement, ratifying the agreement or entering the agreement. The Amnesty Agreement was not approved by the Municipal Court Judge nor was it approved by order of the Municipal Court Judge.

By the terms of the Amnesty Agreement, Appellant allegedly owed a certain amount in parking fines and parking penalties to the City of Fairmont, although *never* admitting same any debt owing to the City of Fairmont, and the Appellant agreed to make monthly payments to the City of Fairmont in exchange for the City agreeing to reduce the parking penalties by half.

The Appellant never was charged with any criminal offense, was never advised that the City may view her parking tickets as criminal in nature, was never advised that if the parking tickets were viewed as unlawful or being criminal in nature that she would have the right to a trial, and was never advised of her constitutional and statutory rights which would attach if her parking tickets had been criminal in nature or if a breach of the Amnesty Agreement would be viewed as a criminal act. The Appellant was never advised that by signing the Amnesty Agreement that she waived or gave up all of her constitutional and statutory rights that one would have if accused of a crime.

Over the course of time, the Appellant made several monthly payments to the City of Fairmont under the terms of the Amnesty Agreement. She had thought she made full payment to the City pursuant to the Amnesty Agreement, but apparently she was

wrong. Thus she subsequently became declared to be delinquent in making monthly payments, which would have constituted a breach of said Amnesty Agreement.

The Municipal Court of the City of Fairmont alleged that it issued a summons to appear for a hearing before Judge Anthony J. Julian, said hearing scheduled for August 16, 2007, at 3:30 p.m. The hearing was scheduled because of Appellant's breach of her contract to pay in accordance with the Amnesty Agreement. The Appellant never received said notice and was unaware that a hearing was being conducted. The Appellant never received a notice from the Municipal Court of the City of Fairmont indicating that she should appear for a hearing at the said Municipal Court on August 16, 2007, at 3:30 p.m. regarding her failure to pay on the Parking Fine [Amnesty] Agreement. In fact, when the Appellant did not appear for the Municipal Court hearing, a Capias was issued for the arrest of the Appellant, said Capias entered by Municipal Judge Anthony J. Julian, without there being a criminal complaint or criminal citation sworn out by a police officer, and without a criminal case being prosecuted by the City Attorney. Appellant's counsel learned of the capias for the Appellant from Officer G. Campbell, and then set out to inform the Appellant the capias for her arrest, so that Appellant could present herself to the Police, instead of being arrested in front of her children. On the evening of August 16, 2007, Appellant did present herself to the Fairmont Police for her arrest. She was then arrested, and processed, without her fingerprints being taken, and without her photo being taken. She was released after paying \$200.00, which was an apparent bond, and with a document being given to her indicating that she should appear for an arraignment at 7:30 a.m. on 8/21/07 in Municipal Court, for the charge of "Capias." (Exhibit 5)

Before the Municipal Court "arraignment" hearing took place on August 21, 2007, the Appellant caused to be filed the petition for a preliminary injunction and temporary restraining order, and writ of prohibition to stop Anthony J. Julian, Judge, and the Municipal Court of the City of Fairmont, from proceeding further in that arraignment. The Circuit Court of Marion County docketed a hearing to hear arguments on August 20, 2007, at which time the Circuit Court took the matters under advisement and ordered the municipal court proceedings to be stayed until further order of the Court.

Subsequently, by Order entered the 23rd day of October, 2007, the Court entered an Opinion/Order which denied the petition for preliminary injunction, permanent injunction, temporary restraining order and petition for writ of prohibition. The Circuit Court thereafter ordered a stay of the municipal court proceedings until the Supreme Court could render a decision regarding this case, and called the case "a close call." It is the denial of the petitions which Appellant asserts was in error and she hereby files this petition for writ of error.

ASSIGNMENTS OF ERROR RELIED UPON ON APPEAL

1. The Court below erred by failing to find that the Municipal Court had no jurisdiction over the Appellants for their breached Amnesty Agreement inasmuch as the breached Amnesty Agreement was not unlawful or criminal in nature but rather it was a civil case which Municipal Court has no jurisdiction.
2. The Court below erred by not granting the Appellants a permanent injunction inasmuch as Appellants met all prongs of the Camden-Clarke test.
3. The Court below erred by denying a writ of prohibition against Judge Julian and the City of Fairmont Municipal Court inasmuch as the Municipal Court, an inferior criminal proceedings court, lacked jurisdiction over the subject matter of Appellants' civil breach of contract with the City of Fairmont.

NOTE OF ARGUMENT

- I. The Court below erred by failing to find that the Municipal Court had no jurisdiction over the Appellants for their breached Amnesty Agreement inasmuch as the breached Amnesty Agreement was not unlawful or criminal in nature but rather it was a civil case which Municipal Court has no jurisdiction.

The City of Fairmont Municipal Court and its Judge, Anthony J. Julian, issued a notice to the Appellants that they should appear at a hearing because of failure to pay on their parking fine agreements, said agreements which were entered into by each Appellant and the City of Fairmont (Bruce McDaniel, City Manager, signing same for the said City.) The said Amnesty Agreement were never the subject of a case before the City of Fairmont Municipal Court.

When the City apparently realized the Appellants were in breach of the Amnesty Agreement, the Municipal Court issued a notice to the Appellants to appear at a hearing in Municipal Court on August 16, 2007. Appellants had never been served any notice of any criminal case being filed against her which would necessitate her appearance. In fact there was never a case or citation filed against the Appellants which would have necessitated her appearance at any hearing in Municipal Court. Appellants were never informed that their breach of contract of the Amnesty Agreement would amount to a criminal offense.

In fact, the Parking Fines and Penalty Payment Agreement, is a contract between the Appellants and the City of Fairmont. It is not a plea agreement. The said Amnesty Agreement indicates that "Failure to provide for any monthly payment in a timely manner shall, in the City's sole discretion, work a forfeiture of this agreement and the Agreement may be deemed null and void." The Agreement further provides that "upon forfeiture of

this agreement or if this agreement shall become null and void all unpaid fines and the entire amount of all penalties described above [sic] recitals, less any payments made hereunder, shall be deemed past due and shall subject the Payor to the same collection and enforcement remedies, including vehicle towing and immobilization, as if this Agreement had not existed."

Accordingly, the Appellants were specifically informed by the contract that if they breached the Amnesty Agreement and did not pay timely monthly payments, that each would be subjected to the same collection and enforcement remedies, including having their vehicles towed or immobilized, as if there was no Agreement at all.

The same collection and enforcement remedies for a person who may owe amounts for parking tickets are found in the City Code. Pursuant to the City of Fairmont Code § 363.07, "A penalty of \$10.00 shall be added to each fine assessed pursuant to the provisions of this section for default in the payment thereof for a period exceeding thirty days. In addition to any other remedies which may be available for the collection of any fines and penalties assessed pursuant to the provisions of this section said fines and penalties shall be a debt due and owing the City which may be collected through any and all civil methods provided by law." (Exhibit 6)

The Fairmont City Code does not define parking meter violations as a criminal offense or misdemeanor. The Fairmont City Code does not make parking meter violations "unlawful." The Fairmont City Code does not define the breach of contract for parking fine agreement to be a criminal offense or a misdemeanor, or unlawful in any way. The Fairmont City Code, does call the failure to pay a parking meter ticket a *fixed penalty* by providing "[a] penalty of \$10.00 shall be added to each fine." The Fairmont City Code

does provide that the City make pursue "remedies available for the collection of fines and penalties" which are a "debt due and owing" and that the same may be collected through *civil methods* provided by law." (emphasis added) The Fairmont City Code does not provide that the parking ticket penalties may be collected through any sort of criminal procedure.

Thus, the parking tickets and their fixed penalties may only be collected through civil means. That is certain by and through the reading of the Fairmont City Code. If certain conduct is deemed criminal in nature and a misdemeanor, then the potential offender must be specifically informed that his or her conduct would amount to a violation of the criminal code and what criminal penalties would attach thereto. "A criminal statute must set out with sufficient definiteness to give a person of ordinary intelligence fair notice that his contemplated conduct is prohibited by statute and to provide adequate standards for adjudication." Syl. Pt. 1, State v. Reed, 166 W. Va. 558 (1998). "We have recognized that this vagueness standard is well settled[.]" State v. Less, 190 W. Va. 259, 263 (1981); see Syl Pt. 1, Reed; State ex rel. Whitman v. Fox, 160 W. Va. 633, 638-39 (1977); State ex rel. Cogar v. Kidd, 160 W. Va. 371, 376-77 (1977), Anderson v. George, 160 W. Va. 76, 84 (1977) (Miller, J. Concurring); State v. Grinstead, 157 W. Va. 1001, 1009 (1974). Further, pursuant to West Virginia Code § 61-11-3, "A common-law offense for which punishment is prescribed by statute shall be punished only in the mode so prescribed."

Accordingly, if the Appellants' failure to pay parking tickets was a criminal offense and if their breach of contract to pay according to the Amnesty Agreement was a criminal offense, the City of Fairmont should have specifically indicated the criminal

offense as a misdemeanor in its Code, as well as the standards for adjudication and the punishment. The City of Fairmont Code does not provide that the failure to pay parking tickets is any criminal offense or is defined as a misdemeanor or is unlawful. The City of Fairmont Code does not provide that the breach of contract of the Amnesty Agreement is a criminal offense or defined as a misdemeanor or is unlawful. In fact, the City of Fairmont Code does provide that for both situations, the City could only pursue towing or immobilization, or civil remedies. Since the Code does not specifically provide for the criminalization of either or for the criminal penalties of either a failure to payment parking ticket or for breach of contract of the Amnesty Agreement, Municipal Court and its Judge should not have issued a capias for the arrest of Appellant, and the Appellant should not have been arrested.

Further, the West Virginia Legislature has not even sought to raise unpaid parking tickets to a misdemeanor act. When a person has defaulted on paying costs and fines which were imposed by magistrate court or municipal court upon conviction of a motor vehicle violation, or when such person has failed to appear when charged with a motor vehicle violation, the DMV shall suspend that person's license after DMV receives such a notice from magistrate or municipal court. W. Va. Code § 17B-3-3a. Importantly, though, this statute specifically excludes from the from the definition of "motor vehicle violation" "any parking violation or other violation for which a citation may be issued to an unattended vehicle" for purposes of W. Va. Code §§ 17B-3-3a, 50-3-2a, or 8-10-2a (which the Respondent wishes to rely on.)

Even more significantly important, the West Virginia Legislature has provided in W. Va. Code § 17B-3-3c that when DMV receives notice that a person has defaulted on

payments of costs, fines, forfeiture, penalties or restitution that have resulted from a circuit court, magistrate court or municipal court conviction, or if that person has failed to appear in court when charged with a criminal offense, DMV shall suspend that person's license upon proper notice. For purposes of W. Va. Code §§17B-3-3c, 50-3-2b, 8-10-2b (also which the Respondent would like to rely on), and 62-4-17, "criminal offense" is defined as any offense or municipal ordinance which could result in a fine, confinement in jail or penitentiary imprisonment, except "any parking violation or other violation for which a citation may be issued to an unattended vehicle. Thus, the West Virginia Legislature has specifically excluded parking ticket fines from being a "motor vehicle violation" and from being a "criminal offense."

No misdemeanor case was instituted by the City of Fairmont Police to cause a *capias* for her arrest to have been issued by Judge Julian. A simple review of the *Capias* shows no evidence of any case number existing and Officer Campbell stated to Counsel that no citation or criminal complaint had been filed regarding the Appellant Hawkins. The *Capias* further evidences that the criminal charge upon Appellant Hawkins was that she "did unlawfully fail to appear at a hearing scheduled 8/16/07 for failure to pay on parking fine arrangement after being sent notice." It is presumed that the *Capias* for Appellant Mezzanotte provided the same. First, neither Appellant did anything unlawfully. Second, there was no lawful hearing scheduled inasmuch as Appellants were never served with any citation of criminal complaint as a charging document. Third, there is nothing criminally unlawful about failing to pay on a parking fine arrangement, as even the City of Fairmont recognizes that its only remedies have to do with towing or immobilizing the Appellant's vehicle or pursuing her in civil litigation.

Although Appellants' cars received a number of parking tickets issued to it, these number parking tickets could never be said to constitute criminal offenses or motor vehicle violations for which criminal citations could be issued. The parking tickets were issued by a person commonly known as a meter maid who is not authorized by law to issue criminal citations. For that matter, the meter maid is only authorized by West Virginia Code to issue parking tickets in Municipal parking lots or Municipal parking buildings. W. Va. Code § 8-14-5a. The said meter maid had no law enforcement authority, under the laws of the State of West Virginia, particularly West Virginia Code § 8-14-5a, to issue parking tickets to vehicles parked at parking meters on Adams Street, in the City of Fairmont. As such a person without authority, she had no power to "make arrests, issue summonses, sign complaints and request the issuance of capiases."

Therefore, since the Appellants' conduct in breaching a contract to pay on their Amnesty Agreements is not a criminal violation, but is a civil matter, they should not have been arrested and they should not continue to have to subject themselves to further proceedings in Municipal Court over this matter. Further, since there was no criminal case filed in Municipal Court and Appellants were never served with same, their appearance in Municipal Court on 8/16/07 should not have been required, and they should not be required to further appear in Municipal Court for any arraignment for any further proceedings, as Municipal Court does not have any jurisdiction whatsoever regarding the Appellants in regard to any criminal proceedings over parking tickets or the Amnesty Agreement. Municipal Court and Judge Anthony J. Julian should have been and must be enjoined and prohibited from conducting further criminal proceedings in this

breach of contract matters, as these matters are civil in nature.

Although the Appellees would like to rely also on West Virginia Code § 17C-19-4 which provides that if a person is arrested for any violation of Chapter 17C of the West Virginia Code, said violation which is "punishable as a misdemeanor" the arresting officer shall prepare a written notice to the person of a time and place which the person shall appear in court. Appellees forget however that the Appellants, herein, were not arrested for any violation of Chapter 17C of the West Virginia Code, nor for any violation which was punishable as a misdemeanor. Therefore, the Appellants should not be subjected to having to appear for any reason in Municipal Court.

West Virginia Code § 17C-2-8(a) does provide that local authorities may "regulate the standing or parking of vehicles." However, municipal court has no jurisdiction over the collection of penalties for parking tickets. The City of Fairmont's own Code provides:

Section 4.03 Municipal Court

There shall be a police court, to be known as the "Fairmont Municipal Court", which shall have criminal jurisdiction over violations of City ordinances and the criminal jurisdiction of a magistrate of the State of West Virginia with respect to offenses committed within any territory in or beyond the City over which the City has police jurisdiction under provisions of general law.

...
The Municipal Judge shall preside over the Municipal Court and with respect to offenses over which the Municipal Court has jurisdiction. The Municipal Judge shall have power to issue warrants upon complaint under oath of any person or officer for the arrest of anyone charged with any offense within the jurisdiction of the Court.

(Exhibit 7)

In the case at bar, the Municipal Court has jurisdiction over criminal offenses, and as already outlined, the West Virginia Legislature has excluded parking tickets as a criminal offense. Also, the Municipal Judge can only issue a warrant for arrest when

there has been a complaint sworn by a police officer for violation of a criminal offense. No police officer swore out any complaint against the Appellant, and certainly no complaint was sworn for the violation of any criminal offense.

The Court below erred by relying on the cases of City of Charleston v. Beller, 45 W. Va. 44 (1898) , Champ v. McGhee, 165 W. Va. 567 (1980) , or State v. Todd Andrew H., 196 W. Va. 615 (1996). Inasmuch as all of those cases are inapplicable to the case at bar and stray significantly from the facts and applicable issues addressed herein.

Beller involved the issue of whether a defendant, who prevailed in his criminal appeal, could recover costs against the City of Charleston. The Court noted that costs could be recovered in a civil case by the prevailing party. A controversy was raised as to whether "prosecutions" for a violation of municipal ordinances were civil or criminal proceedings. The Supreme Court ruled that costs could not be recovered by a prevailing defendant in a criminal action. The Court further stated in dicta, that the true definition of the word "criminal" as distinguished from the word "civil" "...is a violation of any law or ordinance of man subjecting the offender to public punishment including fine or imprisonment...." Id. at 46. In the case at bar, no criminal or civil proceeding was ever instituted against the Appellants, and there was no violation of law or ordinance which would have subjected her to public punishment by either fine or imprisonment.

Champ involved two proceedings where the Appellants were being prosecuted in proceedings for jailable offenses, and the issue was whether they were entitled to jury trials in municipal court." The Supreme Court answered in the affirmative. In dicta, the Court stated, "While violations of the ordinances of municipalities are strictly criminal in nature since they are not private wrongs (citing Beller, supra), the bulk of crimes

considered by municipal courts concern minor traffic violations." As discussed heretofore, however, a parking ticket is not even considered a minor traffic violation pursuant to W. Va. Code § 17B-3-3a, thus municipal court has no jurisdiction over the collection therefore.

Although the Court below also relied on State v. Todd Andrew H., 196 W. Va. 615 (1996), as providing that when a defendant fails to appear pursuant to a citation in Municipal Court, the Municipal Court has authority to issue a capias or warrant. However, the Court below failed to recognize that there was never a citation issued in Municipal Court or by a police officer, and thus, the Municipal Court has no authority to issue a capias or warrant. Todd Andrew H., further, is not applicable to the Appellants' case inasmuch as Todd Andrew H. was issued a citation for a misdemeanor, and Appellants were never issued a citation for any misdemeanor. Todd Andrew H. was lawfully arrested for driving on a suspended licence. The Defendant's license was suspended for failing to appear and protest his citation for a statutorily defined misdemeanor, and thus the citation became an unpaid citation. Todd Andrew H. appealed his conviction for the offense of Driving on a Suspended License (such license which became suspended due to DMV receiving notification of the unpaid citation pursuant to W. Va. Code 17B-3-3a). He attempted to argue that the underlying suspension was unlawful, however the Supreme Court held that since Todd Andrew H. failed to appear to protest his citation for driving with a broken taillight, a misdemeanor as defined in West Virginia Code § 17C-16-6, he could not collaterally argue that the taillight citation and fine was invalid. The Supreme Court did not hold that even if no imprisonment is provided for in a statute that a capias could be issued for a fixed penalty

parking ticket.

In the Appellants' case at bar, there was never any criminal hearing scheduled in their so-called municipal case, no citation ever issued in their so-called municipal case. There is also no statute or city code section which defines as a misdemeanor or unlawful the failure to pay a parking ticket or failure to pay pursuant to a parking violation agreement.

The Court below failed to recognize and point out that the municipal court clearly lacked jurisdiction for all the points raised above. The receipt of a parking ticket is not unlawful or a criminal offense for which a person can be arrested. A parking ticket is issued to a vehicle. It is not issued to the person. The only methods available to collect the fixed penalty attached to the parking ticket, is only through towing, immobilization or through civil methods. The arrest of a person who has not been involved in criminal activity or who has not been charged with a criminal offense is clearly unconstitutional and a clearly a bullying tactic meant to intimidate people into paying fixed penalties without having to resort to spending money to buy an immobilization boot, towing by a tow truck, or the paying of a filing fee to collect a civil debt. Clearly, Municipal Court does not have jurisdiction to order the arrest of people for breaching their contracts with the City of Fairmont.

II. The Court below erred by not granting the Appellants a permanent injunction inasmuch as Appellants met all prongs of the Camden-Clarke test.

In the Court below, the Appellants had originally filed a petition pursuant to Rule 65 of the West Virginia Rules of Civil Procedure for a preliminary injunction and

temporary restraining order. Such Rule provides, in part:

(a) Preliminary Injunction.

(1) Notice.--No preliminary injunction shall be issued without notice to the adverse party. . . .

(b) Temporary Restraining Order; Notice; Hearing; Duration. --

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. . . .

The Appellants recognize and it has long been the ruling of the West Virginia Supreme Court of Appeals that "The granting or refusal of an injunction, whether mandatory or preventive, calls for the exercise of sound judicial discretion in view of all the circumstances of the particular case; regard being had to the nature of the controversy, the object for which the injunction is being sought, and the comparative hardship or convenience to the respective parties involved in the award or denial of the writ." Syl Pt. 2, Camden-Clark Memorial Hospital v. Turner, 212 W. Va. 752 (2002), Syl. pt. 4, State ex rel. Donley v. Baker, 112 W. Va. 263 (1932). Syl. pt. 1, Ashland Oil, Inc. v. Kaufman, 181 W. Va. 728 (1989). Under the balance of hardship test the [lower] court must consider, in "flexible interplay," the following four factors in determining whether to issue a preliminary injunction: (1) the likelihood of irreparable harm to the plaintiff without the injunction; (2) the likelihood of harm to the defendant with an injunction; (3) the plaintiff's likelihood of success on the merits; and (4) the public interest. Camden-Clarke,

supra; Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n, 183 W. Va. 15, 24, 393 S.E.2d 653, 662 (1990) (quoting Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bradley, 756 F.2d 1048, 1054 (4th Cir.1985) (citation omitted)) (additional citations omitted).

Given the emergency nature of the situation and the eleventh hour petition, Appellants' counsel was uncertain about whether she could serve Respondents in enough time to allow them to attend the hearing scheduled for August 16th. Notice was served in time and Respondents' counsel did appear in response to Appellants' application for a preliminary injunction and temporary restraining order. Therefore, Appellants do not need to address the law concerning the applicability of those remedies.

However in regard to the petition for a permanent injunction, the Court below should have ruled in Appellants' favor. The nature of the controversy is whether Appellants should continue to be subjected to criminal proceedings in the City of Fairmont Municipal Court over a breach of contract, which is a civil matter. The nature of the controversy is also whether the City of Fairmont Municipal Court has criminal jurisdiction over what is apparent to be a purely civil matter. The object of an injunction is to stop the City of Fairmont Municipal Court from conducting further criminal proceedings against the Appellants, as the Appellants have not committed any criminal offense and the City of Fairmont Municipal Court has no jurisdiction to conduct criminal proceedings in the subject matter regarding the Appellants.

Thus, in reviewing the first prong of the balancing test of Camden-Clarke, supra, the likelihood of irreparable harm to the Appellants without the injunction is enormous in

terms of the harm to her constitutionally protected liberty and security. The Appellants would have to present themselves for "criminal proceedings" for which no criminal offense is defined and no criminal offense was committed. The Appellants' liberty and right to be secure in her person would be at risk if they were to fail to appear at scheduled proceedings, thus risking another arrest for a non-criminal act. Appellants should not have to appear in Municipal Court when they have been charged with no criminal violation, and voluntarily subjecting themselves to such proceedings would be to admit that Municipal Court has jurisdiction over a breach of contract with the City of Fairmont. If the Appellants do not appear at a further Municipal Court hearing, it is certain that Judge Anthony J. Julian of the City of Fairmont Municipal Court will issue another capias for the arrest of the Appellants and that they will be arrested forthwith, even though it appears that they have fully satisfied the City of Fairmont in the amount of \$200.00, even though she has never been charged with any criminal offense or misdemeanor, and even though the City of Fairmont Municipal Court will never have jurisdiction to conduct a criminal proceeding under any circumstances regarding the Appellant's breach of contract.

The Appellants should not have to appear in criminal proceedings for their breach of contract, as they could never be lawfully convicted of any criminal offense. The Appellants should not have to participate in any way, including the filing of a motion to continue the arraignment or any proceeding in the alleged criminal proceeding, because no criminal code has been violated.

In regard to the second prong of the Camden-Clarke, balancing test, the likelihood of harm to the Appellees if an injunction was granted is nil, inasmuch as the

City has defined for itself the possible remedies to itself: The towing or immobilization of the Appellants' vehicles, or in the alternative, proceeding against the Appellants in a civil lawsuit for their alleged breach of contract.

In the third prong of the balancing test the Court is asked to look at the likelihood of Appellants succeeding on the merits of this case. The likelihood is substantial. It is clear that Appellants' alleged breach of contract is a civil matter, and they cannot be prosecuted criminally for same.

The fourth prong of the balancing test involves the public interest. There is great public interest in assuring that a person will not be arrested and subjected to criminal proceedings and undefined criminal penalties if she or he allegedly breaches a contract. This is a civil matter subject to interpretation and argument according to the rules of civil procedure and the precedents according to contract law. The public interest is great for there should be no loss of liberty or security in one's person for allegedly breaching the terms of a civil contract.

Accordingly, the Appellants did meet all of the requirements for the issuance of a preliminary injunction, permanent injunction, and a temporary restraining order against the City of Fairmont Municipal Court and Judge Anthony J. Julian, which would prohibit both from proceeding further against the Appellant in any criminal proceedings regarding the subject civil matter of breach of contract and unpaid parking meter tickets.

Therefore, the Court below should have entered a permanent injunction order prohibiting the Appellee from proceeding further against the Appellants in any criminal proceedings regarding the subject civil matter of breach of contract, unpaid parking meter tickets, and failure to appear at any hearing regarding same.

III. The Court below erred by denying a writ of prohibition against the City of Fairmont Municipal Court inasmuch as the Municipal Court, an inferior criminal court, lacked jurisdiction over the subject matter of Appellants' breach of contract with the City of Fairmont.

In the Court below, the Appellants asked the Court to issue a writ of prohibition against the Appellees Municipal Court of the City of Fairmont and its Judge, Anthony J. Julian, insofar as the Appellees lacked jurisdiction over the subject matter of Appellants' breach of contract with the City of Fairmont.

Pursuant to West Virginia Code § 53-1-1, a "writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has not jurisdiction of the subject matter in controversy, or having such jurisdiction, exceeds its legitimate powers." "Prohibition relief may be invoked only to restrain inferior courts from proceeding in causes over which they have no jurisdiction, or in which, having jurisdiction, they are exceeding their legitimate powers, and a writ of prohibition may not be used as a substitute for writ of error, appeal, or certiorari." State ex rel. Keenan v. Hatcher, 210 W. Va. 307 (2001). Appellants do not assert that the Municipal Court had jurisdiction and exceeded its legitimate powers.

Appellants did and do continue to assert that Municipal Court has no jurisdiction and the West Virginia Supreme Court has ruled that "Where it appears that court in which a suit or action has been instituted has no jurisdiction to enter any decree or judgment therein, a writ of prohibition against further proceedings therein will issue, regardless of the existence of other remedies available to the party whose interests are affected thereby." State ex rel. West Virginia Truck Stops, Inc. v. McHugh, 160 W. Va. 294 (1977); Lake O'Woods Club v. Wilhelm, 126 W. Va. 447 (1944). Where a lack of

jurisdiction is clear and it is apparent that no legal judgment can be entered, a writ of prohibition is available regardless of right of appeal, writ of error, or other remedies. Id.

In the case at bar, the City of Fairmont Municipal Court has no jurisdiction to enter any criminal decree or criminal judgment against the Appellant, because there is no criminal offense of the City of Fairmont Code or of the State of West Virginia that the Appellants have violated. Further, the City of Fairmont Municipal Court lacks subject matter jurisdiction and jurisdiction over the person because a criminal case has not been filed against the Appellants. It was the Judge, and the Judge only, of the Municipal Court who caused a notice of hearing to be sent to the Appellants without a criminal citation or complaint (based on probable cause) being filed, and the Judge of the Municipal Court also caused a capias to be issued for the arrest of the Appellants (again) without any criminal citation or complaint (based on probable cause) being filed against the Appellants.

The Court below clearly erred when it found that the City of Fairmont Municipal Court could issue a capias for the Appellants or any person who had unpaid parking citations. There is no existing City of Fairmont Code provision which permits the same. The underlying parking citations cannot ever be the basis of any prosecution as they do not constitute unlawful behavior, which was exactly the reason that the City of Fairmont entered into an Amnesty Agreement with the Appellants and others.

Accordingly, without a criminal citation/complaint being filed, which citation/complaint being based on probable cause to believe a criminal offense had occurred, the City of Fairmont Municipal Court lacks jurisdiction over the Appellants. Importantly, since there is no criminal violation of the Municipal Code, the Court lacks

subject matter jurisdiction. Therefore, this Court should enter a writ of prohibition which will prohibit the Municipal Court from proceeding with any case regarding the issues upon which it now considers.

The Court below considered the five factors of State ex rel. Conforti v. Wilson, et al., 203 W. Va. 21 (1998), when determining whether to issue a writ of prohibition. The Conforti case is completely off point to Appellants' argument. Appellants claim and have always claimed that the Municipal Court completely lacked jurisdiction over a breach of contract case when it summoned the Appellants to appear before it for such a matter. The Conforti case should be consulted when it is claimed that the inferior court has exceeded its legitimate powers. Specifically, in Conforti, the Supreme Court excluded lack of jurisdiction cases by stating "In determining whether to entertain and issue a writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower court exceeded its legitimate powers, this Court will examine five factors." (Emphasis added.) Id. at Syl Pt. 2. Those five factors enunciated in Conforti do not apply to Appellant's case at all. The Court below clearly erred and abused its discretion by making the Conforti factors apply when the Appellants specifically indicated that they did not apply, both in her petition below and in her oral argument in circuit court.

Therefore, because of the lack of jurisdiction, the Appellants had rightfully requested that the lower Court enter an order granting a writ of prohibition which would prohibit the City of Fairmont Municipal Court and Judge Anthony J. Julian from proceeding against the Appellants regarding the issues of failure to abide by parking fine agreement, failure to pay parking tickets, and "failure to appear at scheduled hearing of

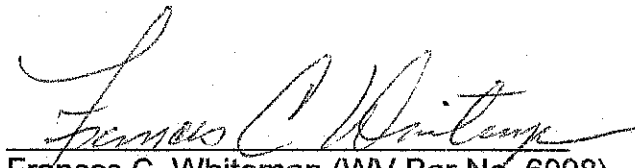
8/16/07 for a failure to pay on parking fine arrangement."

CONCLUSION

Getting a parking ticket is not unlawful conduct or a criminal offense committed by a person, but rather it is the acquisition of a fixed penalty on a vehicle. Entering into a pay-back agreement for the parking ticket acquisition, and the breach of same, is not a criminal offense that can be the subject of a municipal court criminal proceeding. This runaway City of Fairmont Municipal Court gone wild with abusive power must be halted in its steps. The law must be made clear about municipal court jurisdiction and its bounds.

In consideration of all the errors raised, the Appellants hereby pray that this Supreme Court of Appeals will reverse the decision of the Circuit Court and remand the case with further instructions.

LEA ANNE HAWKINS and
GRETCHEN MEZZANOTTE,
Appellants by Counsel



Frances C. Whiteman (WV Bar No. 6098)
Whiteman Burdette, PLLC
P.O. Box 2798
Fairmont, WV 26555-2798
304-366-2116
304-366-8461 (fax)

Counsel for Appellants

Rule 4A(c) Certificate of Appellants' Counsel

I, Frances C. Whiteman, pursuant to Rule 4A(c) of the West Virginia Rules of Appellate Procedure, do hereby certify that the facts alleged in this Brief of Appellants are faithfully represented and that they are accurately presented to the best of my ability.



Frances C. Whiteman

Exhibit 1

PARKING FINES AND PENALTY PAYMENT AGREEMENT

THIS PAYMENT AGREEMENT, made this 28th day of December 2006, by and between hereinafter called "PAYOR", and THE CITY OF FAIRMONT, hereinafter "PAYEE".

WHEREAS, for the period from November 1, 2005, through November 30, 2006, Payor acknowledges owing total parking fines in the amount of \$ and total parking penalties in the amount of \$.

WHEREAS, Payee has instituted an amnesty program through December 31, 2006, which provides for a waiver of one half (1/2) of the aforementioned penalties provided payment of the aforementioned fines and the remaining penalties is made in full in accordance with a written agreement;

WHEREAS, Payor desires to take advantage of said amnesty program.

NOW THEREFORE THIS AGREEMENT WITNESSETH: That for an in consideration of the above recitals, the terms and conditions of this agreement and other good and valuable consideration, the sum and sufficiency of which is hereby acknowledged, PAYOR covenants and agrees to pay to PAYEE the total sum of \$1,000.00, which sum represents all of the above referenced parking fines and one-half (1/2) of the penalties due and owing for the period from November 1, 2005, through November 30, 2006.

1. MONTHLY PAYMENT: Said total sum shall be paid in \$ of per month, commencing on the 15th day of January, 2007 and a final monthly payment of due on the 15th day of August, 2007, or unless sooner paid.

2. METHOD OF PAYMENT ALLOWED: All monthly payments shall be made in the form of a pre-authorized debit card withdrawal or credit card charge only. Payor has selected the following:

- ☒ X Cash/Check/Money Order
☐ Credit Card (Attach Authorization Form)
☐ Debit Card (Attach Authorization Form)

If payment is to be made by credit card or debit card, a form authorizing the payment must be attached to this Agreement. Without submission and full execution of both this Agreement and the authorization form, this Agreement is incomplete and shall be deemed null and void.

3. TIME FOR PAYMENT: Payor shall make provisions for all payments on the date established above, time being of the essence. Failure to provide for any monthly payment in a timely manner shall, in the City's sole discretion, work a forfeiture of this agreement and the Agreement may be deemed null and void. Any check for payment returned to the City NSF shall, in the City's sole discretion, work a forfeiture of this agreement and the Agreement may be deemed null and void.

4. FUTURE FINES AND PENALTIES: Payor covenants and agrees that all future fines and penalties will be paid in full by the due date. Failure to timely make payment of future fines and penalties shall work a forfeiture of this agreement and the same will be deemed null and void.

5. OTHER FINES AND PENALTIES: Payor acknowledges that this Agreement covers only parking fines and penalties accumulated by Payor during the time period set out above. Payor may owe fines and penalties for periods not covered or addressed by this Agreement. Payor further acknowledges that by entering into this Agreement, the City of Fairmont is not waiving any right or ability it may have to enforce or collect any other such outstanding fines or penalties.

6. FORFEITURE: Upon forfeiture of this agreement or if this agreement shall become null and void all unpaid fines and the entire amount of all penalties described above recitals, less any payments made hereunder, shall be deemed

past due and shall subject Payor to the same collection and enforcement remedies, including vehicle towing and immobilization, as if this Agreement had not existed.

7. CONTRACTUAL OBLIGATION Payee and Payor have fully read and understand the terms and conditions of this Agreement and accept the same and the same are contractual obligation of both.

WITNESS the following signatures:

CITY OF FAIRMONT, a municipal corporation

By: Bruce McDaniel

It: City Manager

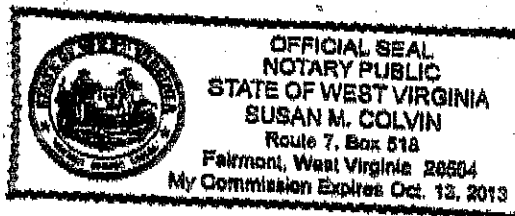
STATE OF WEST VIRGINIA,
COUNTY OF MARION, TO WIT:

The foregoing instrument was acknowledged before me this 28th day of December, 2006 by Payor.

Susan M. Colvin
NOTARY PUBLIC

My Commission expires:

October 13, 2013



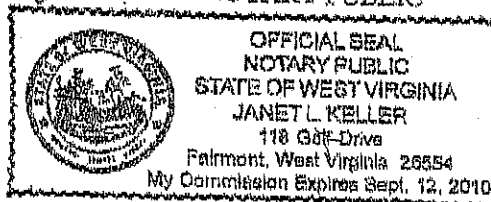
STATE OF WEST VIRGINIA,
COUNTY OF MARION, TO WIT:

The foregoing instrument was acknowledged before me this 2nd day of January, 2007 by Bruce McDaniel, City Manager for the City of Fairmont, for and on behalf of said municipal corporation, Payee.

Janet L. Keller
NOTARY PUBLIC

My Commission expires:

Sept. 12, 2010



THE MUNICIPAL COURT OF FAIRMONT, WEST VIRGINIA

CITY OF FAIRMONT, BY,

PARKING ENFORCEMENT

VS.

CASE NUMBER: _____

LEANN HAWKINS

NOTICE OF HEARING OR TRIAL

The above case is scheduled for a final hearing on the charge of: _____

PARKING METER VIOLATIONS (FAILURE TO PAY ON PAYMENT ARRANGEMENT)

AUGUST 16, 2007	Date
3:30 P.M.	Time
Fairmont Police Dept Public Safety Building 500 Quincy Street Fairmont, WV 26554.	Location

Failure to report for this final hearing will result in a warrant being issued for your arrest.

Sherry L. Gechnes
Municipal Court Clerk

6/22/07
Date of Notice

ADDITIONAL NOTICE TO ALL PARTIES: If any party wishes to request: (1) a trial by jury, (2) a continuance, or (3) any other motion which, if granted, would require rescheduling of the hearing or trial, the party or the party's attorney must do so in writing not less than 3 days before the first date scheduled for such hearing or trial, unless good cause or excusable neglect is shown as to why such request was not made within that time.

Mail to:

1059 INDIANA AVENUEFAIRMONT, WV 26554



CITY OF FAIRMONT MUNICIPAL COURT

Anthony J. Julian, Judge
 Stacy L. Beckner, Clerk
 211 Monroe Street
 Fairmont, West Virginia 26554
 (304) 366-4200 Ext. 443

CAPIAS

CITY OF FAIRMONT,
 STATE OF WEST VIRGINIA:

We Command you, in the name of the City of Fairmont, that you forthwith apprehend and produce the body of LEANN HAWKINS before the Judge of the Municipal Court of said City of Fairmont, at the Police Department in the City of Fairmont, West Virginia, in which the defendant, LEANN HAWKINS, shall be confined in the Marion County Jail until he shall have fully satisfied the City of Fairmont in the amount of \$200⁰⁰ Cash. That the said LEANN HAWKINS did unlawfully:

FAIL TO APPEAR AT A HEARING SCHEDULED 8/16/07 FOR FAILURE TO PAY ON PARKING
FINE ARRANGEMENT AFTER BEING SENT NOTICE

Anthony J. Julian
 Municipal Court Judge

8-16-07

1059 INDIANA AVENUE

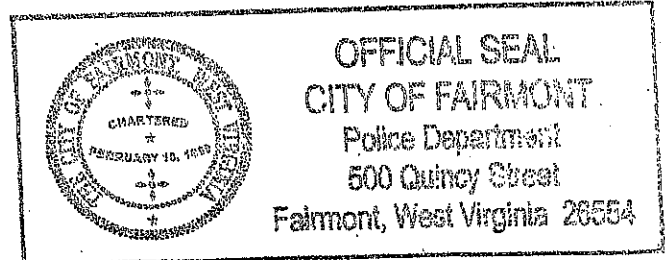
Address

FAIRMONT, WV 26554

City/State/Zip

Social Security Number

Date of Birth



SERVED on August 16, 2007
 in City of FAIRMONT
 by Sgt. G. Campbell

Exhibit 4

Anthony J. Julian, Judge
Stacy L. Beckner, Clerk
211 Monroe Street
Fairmont, WV 26554
(304) 366-4200 Ext. 443

City of Fairmont Municipal Court

DATE: August 16, 2007

DEFENDANT: LEA ANNE HAWKINS

ADDRESS: 1059 INDIANA AVE FAIRMONT WV

CASE NUMBER: 2007-

LEA ANNE HAWKINS, you have been charged with
CAPITAL/FAIL TO APPEAR ON PARKING FINE an offense in the City of Fairmont. Therefore,
please be advised that you are to appear in the Municipal Court of Fairmont, West Virginia,
in front of Judge Anthony J. Julian on August 21, 2007 at
07:30 A M., for purposes of arraignment on the charge(s) stated above. This
date falls within the time required for criminal arraignments.

Anthony J. Julian, Municipal Court Judge

SIGNED:

[Signature]

DEFENDANT

8-16-07
DATE

Exhibit 5
Anthony J. Julian, Judge
Stacy L. Beckner, Clerk
211 Monroe Street
Fairmont, WV 26554
(304) 366-4200 Ext. 443

City of Fairmont Municipal Court

DATE: 08-16-07

DEFENDANT: Kretchen Mezzanotte

ADDRESS: 1694 1/2 Union St., Fairmont, WV

CASE NUMBER: Parking Fine Capias

Kretchen Mezzanotte, you have been charged with

Capias an offense in the City of Fairmont. Therefore,

please be advised that you are to appear in the Municipal Court of Fairmont, West Virginia,

in front of Judge Anthony J. Julian on 08-21-07 at

7:30 A.M., for purposes of arraignment on the charge(s) stated above. This

date falls within the time required for criminal arraignments.

Anthony J. Julian, Municipal Court Judge

SIGNED:

Kretchen Mezzanotte
DEFENDANT

08-16-07
DATE

ARTICLE 363
Parking Meters

363.01	Definitions.	363.06	Depositing slugs; injuring or tampering with meters.
363.02	Parking within marked lines of meter space.	363.07	Notice of parking violation; duty to report and pay fine.
363.03	Deposit of coin required; illegal parking.	363.08	Parking in posted areas.
363.04	Parking prohibited in meter space.	363.09	Street sweeping.
363.05	Responsibility of vehicle owner.	363.10	Towing.
		363.99	Penalty.

CROSS REFERENCES

City Manager's powers - see TRAF. 305.03

363.01 DEFINITIONS.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

- (a) "Parking meter" means a mechanical device installed for the regulation of parking by lawful authority. Each parking meter shall contain a slot for the deposit of lawful coin of the United States and a receptacle for receiving and storing such coin. Each parking meter shall display brief directions as to its operation and the value of lawful coin required to be deposited. Each parking meter shall contain a timing mechanism which shall indicate either a balance of legal parking time or overtime parking by an appropriate signal at the expiration of such lawful time.
- (b) "Parking meter space" means a space within a parking meter area, which is designated for the parking of a single vehicle by marked lines on the curb or paved surface area adjacent to a parking meter. Posted notice on the meter or on signs shall indicate the maximum consecutive parking time limit during which a vehicle may be legally parked in a particular parking meter space and the days and hours when the requirement to deposit lawful coin shall apply.

363.02 PARKING WITHIN MARKED LINES OF METER SPACE.

No person shall park a vehicle in a parking meter space in such a way that the vehicle shall not be entirely within the limits of the space so designated by marked lines.

Exhibit 6

363.03 DEPOSIT OF COIN REQUIRED; ILLEGAL PARKING.

No person shall cause, allow or permit a vehicle to occupy a parking meter space during the hours when the provisions applicable to such space are in effect, unless he shall deposit such lawful coin of the United States of appropriate denomination in the adjacent parking meter, as required by directions on the meter. Such person is not required to deposit a coin in a meter which indicates a balance of unused legal parking time left by the previous occupant of the space, so long as his occupancy of the space does not exceed the indicated unused parking time. The parking meter space may be lawfully occupied by such vehicle during the balance of legal parking time shown on the meter provided such occupancy does not exceed the established maximum time limit.

No person shall fail to comply with directions displayed on the parking meter or fail to set the timing mechanism in operation when so required.

No person shall cause, allow or permit a vehicle to occupy a meter space beyond the maximum consecutive parking time limit lawfully prescribed, for the particular space occupied, by appropriate notice on the meter or on posted signs, irrespective of the number or amount of coin deposited in such meter.

363.04 PARKING PROHIBITED IN METER SPACE.

Notwithstanding any provision of this article, no person shall park in a parking meter space when otherwise directed by a police officer or fireman or when parking is prohibited by properly posted signs.

363.05 RESPONSIBILITY OF VEHICLE OWNER.

No person shall cause, allow or permit any vehicle registered in the name of such person to park overtime, or beyond the period of legal parking time shown on any parking meter, as described in this article. (1968 Code §15-148)

363.06 DEPOSITING SLUGS; INJURING OR TAMPERING WITH METERS.

No person shall deposit or cause to be deposited in any parking meter any slug, device or metallic substitute for any coin of the United States, or injure, tamper with, open, willfully break, destroy or impair the usefulness of any parking meter installed under the terms of this article or any other ordinances of the City. (1968 Code §15-150)

363.07 NOTICE OF PARKING VIOLATION; DUTY TO REPORT AND PAY FINE.

A police officer of the City of Fairmont, any parking enforcement officer or other authorized person shall attach a ticket to any illegally parked vehicle with a notice to the owner of such vehicle parking in violation of the provision of this article, whether the meter is located on the street or in a municipal parking lot, instructing such owner to comply with the directions contained in such ticket or report to the Police Department in regard to such violation.

Any vehicle illegally parked under this article will be ticketed and fined two dollars (\$2.00) when it is first observed and determined by the authorized officer to be in violation of this article. If at least one hour after the first ticketing the vehicle is still parked in violation of this article, it will be ticketed again with an additional fine of five dollars (\$5.00). If at least one hour after the second ticketing the vehicle is still parked in violation of this article, it will be ticketed a third time with an additional fine of ten dollars (\$10.00). If at least one hour after the third ticketing the vehicle is still deemed to be in violation of this article, an authorized officer will have the power to have the car towed and impounded pursuant to Section 303.09. Ticketing officers will note on all tickets the time at which such tickets are placed on the vehicle and the location of such vehicle.

It shall be the duty of the owner of such vehicle to comply with the directions contained in the aforesaid ticket or report to the Police Department within twenty-four hours after such ticket was attached to the vehicle, and to pay to the officer in charge, or his designee, at the Police Department, as a penalty for such violation, the fines accumulated within the previous twenty-four hours or show cause why such penalty should not be levied.

A penalty of \$10.00 shall be added to each fine assessed pursuant to the provisions of this section for default in the payment thereof for a period exceeding thirty days.

In addition to any other remedies which may be available for the collection of any fines and penalties assessed pursuant to the provisions of this section said fines and penalties shall be a debt due and owing the City which may be collected through any and all civil methods provided by law. (Ord. 1155. Passed 4-10-01.)

363.08 PARKING IN POSTED AREAS.

Free parking shall be permitted in designated and properly posted areas for such length of time as posted and designated by the City Manager. Any vehicle illegally parked under this article shall be ticketed and fined five dollars (\$5.00). A police officer of the City or other authorized person shall attach the ticket to the illegally parked vehicle with a notice to the owner of such vehicle parked in violation of the provisions of this article, whether the vehicle is located on a street or a municipal parking lot. If the vehicle remains illegally parked an additional period of time, as designated in the posted area, it shall be ticketed again with an additional fine of ten dollars (\$10.00). If the vehicle remains illegally parked a third period of time, as designated in the posted area, it shall be towed and impounded pursuant to Section 303.09. (Ord. 884. Passed 1-14-92.)

363.09 STREET SWEEPING.

Notwithstanding any section of this article to the contrary, the City Manager is authorized to place and maintain traffic control devices and signs upon any street or highway under the City's jurisdiction as may be necessary to provide for street sweeping, and to restrict or prohibit parking thereon as may be fixed by such device or sign. (Ord. 665. Passed 4-2-85.)

363.10 TOWING.

It is hereby found that street sweeping is necessary and appropriate to the public health, safety and welfare, and any vehicle parked or left unattended in violation of a traffic control device or sign restricting or prohibiting parking during hours for street sweeping shall be towed and taken into custody by the Police Department, or personnel and equipment designated by them for such purposes, and the owner of such vehicle shall pay all costs incident to such towing and custody. (Ord. 665. Passed 4-2-85.)

363.99 PENALTY.

Whoever violates Section 363.06 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.

In the event of the death, resignation, removal or permanent disability of the Municipal Judge, the Council shall appoint a person similarly qualified to serve as Municipal Judge for the unexpired term within fifteen days.

The Municipal Judge shall preside over the Municipal Court and with respect to offenses over which the Municipal Court has jurisdiction. The Municipal Judge shall have power to issue warrants upon complaint under oath of any person or officer for the arrest of anyone charged with any offense within the jurisdiction of the Court. The Municipal Judge shall try and determine all cases over which the Court has jurisdiction, and within the limits prescribed by ordinance or by general law shall have the power to punish by fine or imprisonment, or both. The Municipal Judge shall have power to summon persons or subpoena witnesses for the trial of any case before him, to compel the attendance of police officers of the City, to require the Chief of Police to enforce all judgments or orders entered by him in the exercise of his powers as Municipal Judge, and to issue executions for all fines, penalties and costs imposed by him.

Section 4.04 City Planning Commission.

The Council shall provide for the establishment and financial support of a City Planning Commission as provided by general law. The Commission shall consist of no fewer than 9 nor more than 13 members who shall be appointed by the Council and who shall serve without compensation. Members of the Commission shall meet the qualifications as delineated by law, and the Commission shall have the powers and shall perform the duties presented by the West Virginia Code. These duties shall include recommendations to the City Manager and Council on all matters related to the physical development of the City, shall be consulted on the comprehensive plan and the implementation thereof. The Planning Director will act as secretary to the Commission and will attend all meetings.

Section 4.05 Board of Adjustment.

The Council shall by ordinance establish a Board of Adjustment whose members shall serve without compensation. The Council shall provide standards and procedures for such Board to hear and determine appeals from administrative decisions, petitions for variances in the case of peculiar and unusual circumstances which would prevent the reasonable use of land and such other matters as may be required by the Council or by law.

Exhibit 7

ARTICLE IV - Administrative Departments, Boards and Commissions

Section 4.01 Administrative Offices and Departments.

There shall be in the City government a Police Department, a Fire Department, a Department of Public Works, a Department of Finance, and such other administrative departments as may by ordinance be created by the Council. The City Manager shall appoint as the head of each department a chief, supervisor or director, who shall be responsible for the efficient administration of the department, subject to the supervision and control of the Manager. With the consent of Council, the Manager may serve as the head of one or more such departments, offices or agencies or may appoint one person as the head of two or more of them.

The Council may by ordinance create, combine, change or abolish offices, boards, commissions, departments or agencies, other than those established by this Charter. Except as otherwise provided in this Charter, the Council may assign additional functions or duties to any office, department or agency created by it or by this Charter, but may not discontinue or transfer any function or duty assigned by this Charter to any particular office, department or agency.

Section 4.02 City Attorney.

(a) There shall be a City Attorney who shall be a member in good standing of the Marion County Bar, appointed by the Manager with the approval of the Council to serve at the pleasure of Council. He shall serve as chief legal advisor to the Council, the Manager and all City departments, offices and agencies, shall represent the City in all legal proceedings and shall perform any other duties prescribed by this Charter or by ordinance.

(b) Whenever the exigencies of the business of the City require such action, the City Manager shall have right to employ special counsel to assist the City Attorney.

Section 4.03 Municipal Court.

There shall be a police court, to be known as the "Fairmont Municipal Court", which shall have criminal jurisdiction over violations of City ordinances and the criminal jurisdiction of a magistrate of the State of West Virginia with respect to offenses committed within any territory in or beyond the City over which the City has police jurisdiction under provisions of general law. (Passed by Council 8-17-80)

There shall be a police court judge, to be known as the "Municipal Judge", who shall be appointed by the Council and who shall serve for a term of four years and who shall be subject to removal for cause only. The Municipal Judge shall be an attorney in good standing of the Marion County Bar. He may succeed in office.

In the event of the temporary absence or disability of the Municipal Judge, the City Manager shall appoint a person similarly qualified to serve as Municipal Judge during such absence or disability. Salary shall be transferred from the regular judge in the temporary absence for the time serving.

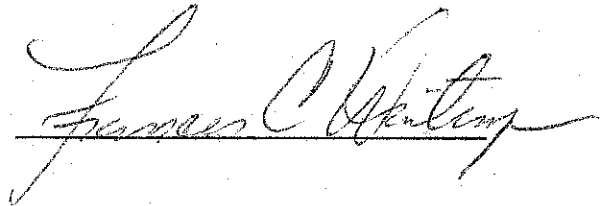
CERTIFICATE OF SERVICE

I, Frances C. Whiteman, do hereby certify that I served the foregoing

BRIEF OF APPELLANTS

this 2nd day of May, 2008, by first class mail, postage prepaid, to the following:

Kevin V. Sansalone, Esquire
City of Fairmont
P.O. Box 1428
Fairmont, WV 26555-1428

A handwritten signature in cursive script, reading "Frances C. Whiteman", is written over a horizontal line.